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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re M.F. et al., Persons
Coming Under the Juvenile
Court Law.

B288545
(Los Angeles County
Super. Ct. No. 17
CCJP02420)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

ME. F. SR.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Julie F. Blackshaw, Judge. Affirmed.

John L. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant Me. F. Sr.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel and Jeanette Cauble, Deputy County Counsel, for Plaintiff and Respondent.

Me. F. (Father) appeals from the disposition order of the juvenile court with respect to his children, M.F. and J.F.

Father challenges the sufficiency of the evidence to support jurisdictional findings under Welfare and Institutions Code¹ section 300, subdivision (b). The court sustained allegations that his children, M.F. and J.F., were at serious risk of physical harm, emotional harm, damage, and danger due to Father's sexual abuse of an unrelated minor. Father also contends the juvenile court erred in removing the children under section 361 subdivision (c) because they were not living with him at the time the petition was filed. Finally, Father alleges error because, he contends, there were other reasonable means short of removal to protect the minors.

We conclude substantial evidence supports the court's dispositional order and jurisdictional findings. We affirm.

BACKGROUND

At the time the case was initiated, then 8-year-old M.F. and 4-year-old J.F. resided with their mother (Mother), who was their primary caregiver. No custody order was in place. Father was reported to be mostly absent from the children's lives and his whereabouts were unknown. If the children wanted to see Father, Mother would contact him via social media to arrange a visit. The family had no set visitation schedule; the children and Father would "run into each other sparingly." The children had last seen Father a month before the petition. The romantic

¹ All further statutory references are to the Welfare and Institutions Code.

relationship between Mother and Father ended around the time of J.F.'s birth.

Father was arrested on October 15, 2017 for human trafficking of an unrelated minor. The minor was exploited by Father and worked for him as a prostitute for four consecutive nights providing him with \$600 each night. Father kept all the money she earned. The minor reported Father attempted to get aggressive with her the day of the arrest. Additionally, Father sexually abused the unrelated minor by having her orally copulate him.

Once it was discovered that Father had two biological children, MART (Multi-Agency Response Team) was contacted and the Department of Children and Family Services (the Department) began an investigation.²

On December 12, 2017, the Department filed a petition under section 300, subdivision (b). The first count alleged Father's sexual abuse of an unrelated minor placed his children at risk of serious physical and emotional harm, damage, danger and sexual abuse. The second (b) count concerned only Mother, who is not a party to this appeal.³

² The Department developed MART to work with law enforcement to provide protective services to children identified in homes associated with high profile endangerment cases. Its goal is to "provide a more expedited and trained response to . . . specialized law enforcement referrals. . . to minimize the traumatic effect these crimes have on children and families."

³ The count against Mother alleged her substance abuse endangered the children's health and safety, and she had left the children in the care of a grandparent who had a history of substance abuse and unresolved mental health and emotional problems.

At the February 14, 2018 hearing, the juvenile court sustained an amended version of the petition finding true the allegation against Father. Mother pled no contest to the petition. The juvenile court granted enhancement services and monitored visitation to Father. Father appeals this order.

DISCUSSION

1. Dependency Jurisdiction

Father contends the juvenile court erred by finding dependency jurisdiction, and reversal is required because there was no substantial evidence his conduct placed the children at risk of physical and emotional harm. Further, he alleges section 355.1 subdivision (d) does not apply because the children did not reside with him.

a. Substantial Evidence

The standard of review for “juvenile court’s jurisdiction findings and disposition” orders is “substantial evidence.” (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1384.) “Under this standard ‘[w]e review the record to determine whether there is any substantial evidence to support the juvenile court’s conclusions, and we resolve all conflicts and make all reasonable inferences from the evidence to uphold the court’s orders, if possible.’ [Citations.]” (*Ibid.*)

The burden is on the appellant to show “the evidence was not sufficient to support the findings and orders. [Citation.] The reviewing court may not reweigh the evidence or express an independent judgment. [Citation.]” (*In re Alexzander C.* (2017) 18 Cal.App.5th 438, 446.) Rather, the reviewing court must determine whether “a reasonable trier of fact could have found

for the respondent based on the whole record.” (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633, italics omitted.) Under section 300, the requirement is *not* “that a child actually be abused or neglected before the juvenile court can assume jurisdiction.” (*In re I.J.* (2013) 56 Cal. 4th 766, 773.) Instead, section 300 requires only a “substantial risk’ that the child will be abused or neglected.” (*In re I.J., supra*, 56 Cal. 4th at p.773.)

Here, the juvenile court found Father’s act of trafficking and sexually abusing an unrelated minor placed the children at “risk of physical and emotional harm by the Father.” Father alleges his acts did not amount to substantial evidence his “conduct placed [his own] children at risk of physical and emotional harm.” Father makes four factual assertions in support of his argument. First, the children were attached to him and wanted to be around him. Second, Mother was in shock about the allegations. Third, the sex-traffic victim denied physical abuse. Fourth, he did not live in the home with the children.

None of these assertions address the seriousness of Father’s sex-trafficking or sexual abuse of the unrelated minor, which was the primary basis for the juvenile court’s finding. Indeed, the sex trafficking charge was the reason the Department deemed the children at risk initially. The court found Father’s “blatant disregard for the safety of this young victim puts his own children at risk.” Father’s victim, who was found in Father’s presence, spoke openly to police about his sex-trafficking activities. The victim was forced to work for Father for four days and to give all money earned to him. She also complained that Father was physically aggressive with her. “[S]exual or other serious physical abuse of a child by an adult constitutes a fundamental

betrayal of the appropriate relationship between the generations.” (*In re Kieshia E.* (1993) 6 Cal.4th 68, 76-77.) Here, Father’s actions are “so sexually aberrant’ to support the commonsense conclusion” that his children were at risk of harm. (*In re Ana C.* (2012) 204 Cal.App.4th 1317, 1332.)

For the foregoing reasons, we conclude that substantial evidence supports the juvenile court’s jurisdictional finding.

b. Section 355.1, Subdivision (d)

Father also argue that section 355.1, subdivision (d) does not apply. However, Father does not point to anything in the record to show that the court relied on that statute to support its analysis. “[A]ppellant must do more than assert error and leave it to the appellate court to search the record and the law books to test his claim.” (*Yield Dynamics, Inc. v. TEA Systems Corp.*, (2007) 154 Cal.App.4th 547, 557.) We therefore decline to address this argument.

2. Custody order

Father argues the court improperly ordered the children removed pursuant to section 361 subsection (c) because they were not living with him at the time the petition was filed.

Section 361 subdivision (c) permits a child’s removal “from the physical custody of his or her parents . . .with whom the child resides at the time the petition was initiated. . . .” Because neither of the children resided with Father at the time the petition was filed, neither could be removed from his physical custody. (*In re Julien H.*, (2016) 3 Cal.App.5th 1084, 1089.)

Nevertheless, the juvenile court has “the power,” under section 361 subdivision (a) and 362, subdivision (a), to “limit the access of

a parent with whom the child does not reside and thus effectively remove the child from the noncustodial parent.” (*In re Julien H.*, *supra*, 3 Cal. App. 5th at p.1090.) The juvenile court appropriately exercised that power here. As the February 14, 2018 minute order states, the court’s findings were “pursuant to Welfare and Institutions code 361(a), 361(c), and 362(a) . . .” (Italics added.) “[S]ection 361, subdivision (a)(1), grants the court authority to ‘limit the control to be exercised over the dependent child by any parent or guardian.’ [Citation.] And unlike subdivision (c) of section 361, subdivision (a)(1) applies to ‘any parent,’ not solely to parents with whom the child resides. Similarly, section 362, subdivision (a) further authorizes the court to ‘make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child.’ [Citations.]” (*Ibid.*)

Thus, Father’s arguments that the removal order must be vacated because it is unauthorized, or because other alternatives were available to the juvenile court, are unavailing.

DISPOSITION

The removal order and jurisdictional findings are affirmed.

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CURREY, J.

WE CONCUR:

WILLHITE, Acting P. J.

COLLINS, J.